IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 2189

IN RE: APPLICATION OF THE PRESIDENT AND DIRECTORS OF GEORGETOWN COLLEGE, INC., A BODY CORPORATE

On Petition of Jessie E. Jones, Respondent, for Rehearing En Banc

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BRIEF FOR APPLICANT IN OPPOSITION

The respondent Jessie Jones seeks a rehearing en banc to attack the validity of an order without which she could not now appear before this court in propria persona—she would not be alive. This single, essential fact is continually lost in the extended discussion of hypothetical questions in the respondent's petition for rehearing.

Mrs. Jessie E. Jones was admitted to the applicant's hospital at 6 a.m. on September 17, 1963, for emergency care due to excessive gastrointestinal bleeding. This loss of blood was the precipitating cause for submission to emergency hospital care. By mid-afternoon of the same day, other remedies having failed, and the respondent hav-

ing lost two-thirds of her normal blood supply, one fact stood undisputed and inevitable—the respondent would die within a matter of hours if she were not administered blood transfusions. This prospect was not a "probability" or a "risk", it was certain. This fact was sworn to without reservation by four medical doctors holding positions of responsibility for the applicant; it was found by Judge Wright both on their representations and upon his own personal observation; it is undenied by the respondent in her petition for rehearing. Thus, the choices open first to Jessie Jones and later to Judge Wright were crystal clear, (1) the certain and immediate death of the respondent or (2) the administration of a transfusion that would in all probability save her life—a probability which later events have shown to be correct. This was the context and sine qua non of Judge Wright's order, and any discussion of issues not based on this condition is hypothetical and beyond the scope of possible judicial review in this case.

The respondent faces this issue in proper context at only one point in her petition for rehearing. She admits, in accord with dictum in *Reynolds* v. *United States*, 98 U.S. 145, 167, that a court may take action if a widow, in accordance with her religious belief, were to attempt suicide by throwing herself upon the funeral pyre of her husband, or, to use a more current example, if a Buddhist monk were to attempt self immolation in the United States in accordance with the dictates of his religious conscience. While conceding the appropriateness of judicial interference in such situations, respondent distinguishes her own on the narrow thread that her's was an act of omission rather than commission. This distinction, however, has no rational or legal basis. The Buddhist soaked in gasoline with match in hand has before him the same choice of immediate death or continuation of a fruitful life as did the respondent with the transfusion equipment poised over her bed. Both consciously choose immediate death on the basis of a religious tenet. Both attempt a decision which

no court in this country should condone if an opportunity for preventive action remains open.[1]

The very example of an act of omission in *Reynolds* v. *United States*, 98 U.S. at 167, upon which the respondent relies for her distinction fails to support her as a matter of settled law. The Court in *Reynolds* cites the old English case of *Regina* v. *Wagstaffe*, 10 Cox, Cr. Cas., 531, for the proposition that parents may not be held guilty of manslaughter for having omitted to call in medical attendance for their sick child because of their religious belief that what they did for its cure would be effective. While this religious motivation for an otherwise culpable act of omission may obviate criminal liability, it will not affect timely civil action. It is beyond dispute that if a court of competent civil jurisdiction becomes aware of the child's malady prior to its death, it not only may, but must, use its judicial power to provide the child with medical attention. *See People* v. *Pierson*, 176 N.Y. 210, 68 N.E. 243 (1903) (cited by Judge Wright in his memorandum opinion). In fact, the implication of *Regina* v. *Wagstaffe* is quite the opposite of that suggested by the respondent. It poses the question of whether the applicant, who had accepted responsibility for the respondent as an emergency case, would have been insulated from criminal liability for having omitted to give a life-saving blood transfusion to the respondent out of respect for her religious tenets, tenets in which they themselves did not believe.

The fact is that no court of competent jurisdiction may stand idly by while a human life is intentionally and will-

[1] The respondent's argument that the Roman Catholic faith "would forbid the abortion of a pregnant woman, even though continuation of normal pregnancy *might* result in her death." Respondent's Petition for Rehearing, pp. 21-22 (emphasis added), is not in point. First, it ignores the sine qua non of Judge Wright's order that the patient be in extremis faced with immediate and certain death. Second, an abortion involves not one, but two lives and the moral decision of which to save.

fully destroyed. Although the respondent argues that disposal of her own life is a personal and religious matter in which society has no interest, this is demonstrably not true. No person may claim her own life does not affect the interests of others, especially when, like the respondent, she is the mother of a seven-month-old baby whom she has a religious, moral, and even legal obligation to support. This elemental interest of society in the preservation of individual life is inherent in the early English determinations at common law that suicide constitutes a felony and crime against society.

The merits of Judge Wright's decision aside, the issue is now moot. The order itself is conditioned on respondent being in extremis within the applicant's care. When she was discharged from the hospital, the order became moot by its own terms. Even accepting these facts, the respondent argues she is still entitled to a rehearing for the purpose of setting a precedent since the order by its very nature is quickly self-mooting. While the federal courts have in certain restricted circumstances heard an appeal when the order appealed from appears moot, the respondent does not allege facts sufficient to come within them. Most of these cases deal with governmental regulatory agencies which are continually concerned with the issue of law involved in the mooted order below. The respondent, however, argues that this same rule applies to a private party who makes a showing that the mooted dispute is likely to arise again between the parties. While not admitting the validity of this argument, the applicant merely points out that the respondent in this case has made no attempt to show there is a likelihood that her dispute will arise once more with the applicant (or any other hospital) or that she will again come within the terms of the now moot order of Judge Wright. Although other members of her faith may have a continuing interest in the issue presented here, they are not parties and have no standing to assert an interest in this proceeding. The case there-

fore comes within the classic doctrine of mootness. Had Judge Wright denied the order and the applicant sought a rehearing en banc, the administrator of the respondent's estate would undoubtedly have made this same argument — and prevailed.

It is respectfully submitted that the petition for rehearing en banc should be denied on the ground that the issue has become moot.

Respectfully submitted,

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AFFIDAVIT

Peter R. Taft, having been duly sworn, deposes and says:

1. I am an attorney for the applicant, President and Directors of Georgetown College, Inc.

2. The records of Georgetown Hospital show that Mrs. Jessie E. Jones was discharged from the hospital on September 25, 1963, that by that date all internal bleeding had ceased, and that her recovery in health was sufficient so as no longer to require hospital confinement.

PETER R. TAFT
Peter R. Taft

Subscribed and sworn before me this 21st day of October, 1963.

JEANNE H. BEELMUND
Notary Public, D. C.

My Commission Expires August 31, 1968